

Amer.
P.L.I.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20549

04706

FILE: B-189926

DATE: December 27, 1977

MATTER OF: Williams and Company, Inc.

DIGEST:

Request for modification of contract price due to alleged error in bid, claimed after award, is allowed, because contracting officer, in discharging bid verification duty, failed to specifically point out discrepancy in contractor's bid.

On the basis of a mistake in bid alleged after award, Williams and Company, Inc. (Williams) requests modification of contract No. DACW27-77-C-0021 awarded to Williams by the Army Corps of Engineers (Army) for varied quantities of stainless steel pipe (Items No. 1 and No. 2), stainless steel elbows (Items No. 3 and No. 4), and stainless steel flanges (Items No. 5 and No. 6). In bidding Items No. 3 and No. 4, Williams states, it mistakenly bid less expensive cast fittings instead of the more expensive wrought fittings called for under the solicitation as amended.

The solicitation, as originally issued, required that:

"[a]ll stainless steel pipes, elbows and flanges
** * be ASTM Standard A 312 'seamless and
welded austenitic SS pipe'. Grade TP 304-
Schedule 40."

Upon receipt of the solicitation Williams noticed that with regard to Items No. 3 and No. 4 there was no indication in the solicitation as to whether they were to be 150-pound fittings or more heavily rated fittings. This discrepancy was reported to the Army. The Army subsequently issued an amendment to the solicitation which among other things addressed the issue which Williams had raised. The amendment as issued consisted of two pages and an attachment. The attachment was to be substituted for the above quoted specification and read as follows:

"SPECIFICATIONS FOR
STAINLESS STEEL PIPE,
ELBOWS, FLANGES

Stainless Steel Pipe [Items No. 1 and No. 2]

B-189926

All stainless steel pipes to be ASTM standard A312 'Seamless & welded austenitic SS pipe'. SS Pipe may be seamless or welded. Grade TP304 Schedule 40.

Stainless Steel Elbow [Items No. 3 and No. 4]

All stainless steel elbows are to be ASTM standard A403 'Wrought austenitic SS pipe fittings'. Elbows shall be threaded, short radius. Grade TP304.

Stainless Steel Flanges [Items No. 5 and No. 6]

All stainless steel flanges are to be ASTM standard A403 'Wrought austenitic SS pipe fittings'. Flanges shall be raised face. Grade TP304."

The first page of the two page amendment contained the following pertinent provisions:

"Subject Solicitation for Stainless steel pipe, elbows, flanges, bolts, is hereby amended as follows:

* * * * *

2. PART II - Section E: Page E-1, Items 3 and 4; the words Schedule 40 are deleted and the words Rated for 1000 lbs. minimum pressure are added. * * *.
3. Section F: Page F-1 is deleted, and the attached Page F-1 (revised) is substituted therefore."

Williams reports that because the second paragraph of the above quote answered the question which it had raised, Williams felt that the complete description of Items No. 3 and No. 4 consisted of the specification as originally issued plus paragraph 2, quoted above. Williams overlooked the additional statement with respect to Items No. 3 and No. 4 which was referenced in the revised Page F-1 previously quoted

At bid opening the contracting officer was confronted with the following pattern of bids for Items No. 3 and No. 4, as well as total amounts bid for all items:

B-189926

<u>Bidder No.</u>	<u>Item No. 3</u>	<u>Item No. 4</u>	<u>Total Bid for all Items</u>
1.	No bid	No bid	13,989.50
2.	<u>340.00</u>	<u>504.00</u>	31,743.00
3. (Williams)	<u>34.11</u>	<u>60.00</u>	23,030.86
4.	30.65	49.83	24,044.06
5.	<u>276.00</u>	<u>470.00</u>	28,068.60
6.	<u>53.00</u>	<u>107.00</u>	45,590.00
7.	37.85	60.00	25,151.90
8.	24.37	49.22	25,059.62
9.	24.38	49.22	24,134.16
10.	25.44	51.36	26,261.84
11.	<u>245.76</u>	<u>562.84</u>	28,437.10

(Bidder No. 1 was not eligible for award since it failed to bid on all items as required by the solicitation.)

Of the ten bidders who bid Items No. 3 and No. 4, the three which we have underscored were extremely high while the other seven were considerably lower. However, this disparate pattern only occurred with respect to Items No. 3 and No. 4; all other items were bid without any significant deviation. The abstract of bids shows that 62 separate prices in all were bid by the eleven bidders for Items No. 1 through No. 6. Of the 62 prices only the six prices underscored above varied significantly from the otherwise closely competitive pattern. The Government had estimated the cost of Item No. 3 at approximately \$53 per unit while that of Item No. 4 was estimated at approximately \$107 per unit. It is the Army's position that its examination of the bids revealed only a wide disparity in the bid prices and the fact that the Williams bid appeared to be inordinately low in comparison with the other bids received. Further, the Army asserts that the abstract of bids did not put the contracting officer on notice of Williams' error and that the error is not evident on the face of the bid.

When Williams discovered its error it requested that the Army modify the contract to provide for the supply of the wrought fittings at cost. This would increase the contract price by \$3,012.90. The Army then questioned the next four low bidders regarding the basis of their respective bids and learned that all had committed the same error as Williams and had bid on the basis of a cast stainless steel requirement instead of a wrought stainless steel requirement. Moreover, three of the four bidders have no source for wrought fittings while the fourth bidder could only obtain it at a higher price. The Army concluded on this basis that if the relief sought by Williams were effected it would not displace any of the next four low bidders. However, the Army denied Williams'

B-189926

request on the ground that Williams had failed to establish, with clear and convincing evidence, that the contracting officer was, or should have been, on notice of the error prior to award as is required by Armed Services Procurement Regulation § 2-406.4 (b)(ii) (1976 ed.). The Army points out that the contracting officer did seek verification of the Williams bid prior to award and that Williams furnished the same in writing.

We note that for Items No. 3 and No. 4, six bids were considerably lower than the Government estimate, while one was at the Government estimate and three were approximately six times higher than the Government estimate. We believe that this pattern, together with the fact that Items No. 3 and No. 4 were the subject of clarification in the only amendment issued, should have raised the issue of whether the amendment was being erroneously interpreted by the bidders with respect to Items No. 3 and No. 4. This being the case we are further of the opinion that the contracting officer should have specifically mentioned Items No. 3 and No. 4, when seeking verification of the Williams bid. We think that in these circumstances the rule of United States v. Metro Novelty Mfg. Co., 125 F. Supp. 713 (S.D. N.Y. 1954), that a request for verification must be sufficiently explicit to put the bidder on notice that a mistake is actually suspected, is applicable. The Army's position that it was the overall discrepancy in prices bid, rather than the discrepancy among the prices bid for Items No. 3 and No. 4, and the possible erroneous interpretation of the specification applicable to these items, which prompted the request for verification, shows that Williams' verification of its bid was not based upon the information which should have caused the contracting officer to request verification in the first place. We therefore conclude that the contracting officer should have pointed out the discrepancy between the bids for both Items No. 3 and No. 4 in the course of seeking verification and that the failure to do so provides an adequate basis upon which to grant the relief sought by Williams. See Atlas Builders, Inc., B-186959, August 30, 1976, 76-2 CPD 204.

In light of the fact that performance has been completed, relief should be granted by modifying Williams' contract so that the prices for Items No. 3 and No. 4 conform to the reasonable cost to Williams of the correct items which it has in fact supplied the Government. In this regard, we note that Williams' bid was \$23,030.86, and that it has stated that the cost of the correct fittings would add \$3,012.90 to its bid, for a total of \$26,043.76. In cases such as this, we have limited the relief granted to the amount of the next high bid. Here, however, the second, third and fourth low bidders, whose respective prices were \$24,044.06, \$24,134.16 and \$25,050.62, all have

B-189926

alleged that they made the same error as Williams. The relief requested by Williams would not bring its price above that of the fifth low bidder, whose price was \$26,261.84.


Deputy Comptroller General
of the United States